

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

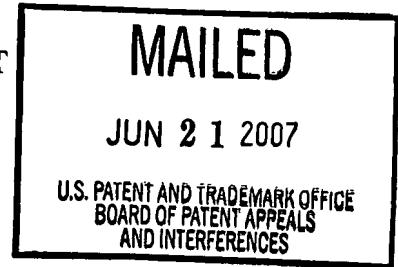
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Ex parte: MICHAEL LEON FEILMEIER,  
CHARLES DEAN BRADT and ERIC LEE BRANDT

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Application No. 10/039,175

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was electronically received at the Board of Patent Appeals and Interferences on June 11, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

**APPEAL BRIEF**

**Summary of Claimed Subject Matter**

Appellant filed an Appeal Brief dated November 4, 2004, in response to the Final Rejection mailed April 6, 2004. The Appeal Brief is not in compliance with the new rules of 37 CFR § 41.37(c) effective September 13, 2004, which states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

\* \* \*

(c)(1) The brief shall contain the following items...of this section:

(v) ***Summary Of Claimed Subject Matter.*** A concise statement of each ground of rejection presented for review.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief. The Appeal Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claims argued separately, every means plus functions and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with references to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

37 CFR 41.37(c)(2)(d) states:

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed

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subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

**SUPPLEMENTAL EXAMINER'S ANSWER**

**Evidence of Record**

On March 9, 2006, a Supplemental Examiner's Answer was mailed in response to the Board of Patent Appeals and Interference's Order Returning Undocketed Appeal mailed August 23, 2005. A review of the Supplemental Examiner's Answer reveals that it is not in compliance with the Manual of Patent Examining Procedure (MPEP). In the "Evidence Relied Upon" (section 8) the Examiner cites a reference (Kato 6,297,795) that is not cited as prior art or used as a reference to reject any of the claims on appeal. In accordance with MPEP § 1207.02, the Evidence Relied Upon (section 8) should include:

**(8) Evidence Relied Upon**

A listing of evidence relied on (e.g., patents, publications, admitted prior art), and in the case of non-patent references, the relevant page or pages.

Correction of the record is required.

**CONCLUSION**

Accordingly, it is

**ORDERED** that the application is returned to the examiner to:

- 1) hold the Appeal Brief of November 4, 2004, defective;
- 2) notify applicants to file a "paper" in compliance with 37 CFR § 41.37 (as identified above);

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- 3) issue and mail a form PTOL-90 notifying:
  - a) Appellant of the Examiner's considering and/or acknowledgment of the Appellant's "paper;" and
  - b) correcting the Supplemental Examiner's Answer, citing only prior art and those references used to reject the claims on appeal;
- 4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

  
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